

SHIMLA:

Date of Decision :8th October, 2007.

...Appellant.

Ranjit Singh.

...Accused.

The Hon'ble Mr.Justice Sanjay Karol, Judge.

For Respondent. Mr.Bhuvnesh Sharma, Advocate.

As per the case of the prosecution, on 14th April, 1994 complainant-Satya Devi (PW-1) while working in her field objected to the accused digging the boundary of her land. At that, the accused caught hold of and twisted her left

¹ Whether reporters of Local Papers may be allowed to see the judgment?

arm which resulted into swelling. She was pushed further due to which she fell on the stones causing injury on her back. On raising hue and cry, her husband Amar Nath and daughter-in-law Sunita Devi (PW-3) came to the spot and rescued her from the clutches of the accused. The incident was witnessed by Smt. Nikki Devi (PW-2), Bishan Dass and other persons who had gathered on the spot. The accused also threatened PW-1 of dire consequences.

F.I.R.No.35/94 (Ext.PA) was registered with Police Station, Barsar under Sections 325, 323 and 506 I.P.C .and the investigation started. PW-1 was got medically examined and after completing the investigation the challan was presented in the Court for trial and after due compliance of the provisions of Section 207 Cr.P.C. the charges against the accused under Sections 325, 323 and 506 of the Indian Penal Code were framed. The accused pleaded not guilty and claimed trial.

The prosecution, in all examined seven witnesses to prove its case. The statement of the accused under Section 313 Cr.P.C. was recorded and in defence one witness was examined.

Having appreciated the material on record, including the depositions of the witnesses, the court acquitted the accused giving him benefit of doubt for the reason that there was prior litigation between the parties and the material eye witness had not supported the case of the prosecution.

Further there were contradictions in the statements of the witnesses and delay in lodging the F.I.R.

I have examined the statements of the witnesses. Smt. Satya Devi (PW-1) is the complainant, assaulted by the accused. Nikki Devi (PW-2) is an independent witness. Smt. Sunita Devi (PW-3) is the daughter-in-law of PW-1 also an eye witness. Dr.J.R.Azad (PW-4), Pratap Chand (PW-5) and Dr.Suredner Singh (PW-6) are the doctors who medically examined PW-1 and have deposed about the injuries. Sh.Karnel Singh (PW-7) is the formal witness and ASI Pratap Chand (PW-7) (wrongly numbered) is the Investigating Officer who carried out the investigation.

PW-1 has admitted in his cross-examination that she has filed civil suit against the accused with regard to her house. She has further admitted that in a criminal case filed by her against the accused, the accused stands acquitted. She has also admitted that proceedings under Sections 107 and 151 Cr.P.C. were initiated against the parties which were finally dropped.

She has admitted that on her raising hue and cry PW-2, PW-3 and her husband came at the spot. This stands contradicted by PW-2, who in her examination-in-chief has stated that she had seen the accused giving beatings to PW-1 but in her cross-examination has categorically admitted that there were labourers at the site and she had not seen PW-1

being beaten by the accused nor did she see the accused twist the arm of PW-1.

PW-3 has admitted in her cross-examination that she came out of her house after hearing the noise made by PW-1. As per her version, none was present from the village at the time of the incident. She has admitted that the husband of PW-1 came at the spot much after the incident. Even according to her, she has not witnessed the incident.

The statements of PW-5, PW-6 and PW-7 have been recorded to prove the injury of the complainant. PW-6 has admitted that the injuries on the body of PW-1 are possible due to fall on hard surface. These injuries are on the arm of PW-1. It has come on record that there is no other injury on the body of PW-1.

Statements of PW-1 and PW-3 do not inspire confidence and in the absence of any independent witness, in my view, it would not be safe to set aside the order of acquittal and hold the accused guilty of the charged offence. PW-1 has stated that on raising alarm both PW-2 and PW-3 came at the spot. As per the case of the prosecution apart from PW-2 one Bishan Dass and other villagers were also on the spot at the time of the alleged incident. PW-3 has not corroborated the version of PW-1. She does not say that PW-2 was present at the time of the commission of the alleged offence. PW-1 has further stated that she was threatened by the accused with dire consequences. This is also not

corroborated by PW-3. Statement of PW-2 in any case cannot be relied upon as she has categorically admitted that she had not seen the accused giving beatings to PW-1. Why Bishan Dass and other independent witnesses have not been associated during the investigation or examined during the trial remain unexplained. Importantly, husband of PW-1 has also not been examined by the prosecution. It has come on record that the complainant suffered injury only on her arm and not her back. In the present case the alleged incident took place on 11th April, 1994 at about 2.30 P.M. in a broad day light. There has been delay in lodging the F.I.R. as the same was recorded on 14th April, 1994. There is no explanation on the record to justify such delay which in my view, under the circumstance would be fatal.

The Court below has correctly appreciated the material on record and arrived at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged

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**(Sanjay Karol),
Judge.**

October 8, 2007(R)

